



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

FEB 03 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7006 0810 0005 9535 8595

John M. McManus
Vice President, Environmental Services
American Electric Power Company, Inc.
1 Riverside Plaza
Columbus, OH 43215-2373

Subject: Notice and Finding of Violations

Dear Mr. McManus:

Enclosed is a Notice and Finding of Violations (Notice) issued to American Electric Power Company, Inc. (AEP), American Electric Power Service Corporation (AEP Service Corp.), and Southwestern Electric Power Company (SWEPCO) pursuant to Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). In the Notice, the United States Environmental Protection Agency is notifying AEP, AEP Service Corp., and SWEPCO of violations of the Prevention of Significant Deterioration requirements and New Source Review permitting requirements of the Texas State Implementation Plan, and the Title V permitting requirements at its Welsh Power Plant in Titus County, Texas.

Please note the opportunity to confer outlined in the Notice. As indicated in the Notice, any request to confer should be directed to Evan Pearson, Senior Enforcement Counsel. Mr. Pearson can be reached at (214) 665-8074.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Blevins", written over a horizontal line.

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Elizabeth Gunter (AEP)
John Sadlier (TCEQ)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

AMERICAN ELECTRIC POWER
COMPANY, INC.,

AMERICAN ELECTRIC POWER
SERVICE CORPORATION, and

SOUTHWESTERN ELECTRIC POWER
COMPANY

WELSH POWER PLANT
TITUS COUNTY, TEXAS

PROCEEDING PURSUANT TO
SECTION 113 OF THE CLEAN AIR ACT

NOTICE AND FINDING OF VIOLATIONS

This Notice and Finding of Violations (Notice) is issued to American Electric Power Company, Inc. (AEP), American Electric Power Service Corporation (AEP Service Corp.) and Southwestern Electric Power Company (SWEPCO) (collectively referred to as AEP/SWEPCO) for violations of the Clean Air Act (Act), 42 U.S.C. § 7401 *et seq.*, at its Welsh Power Plant in Titus County, Texas. Specifically, AEP/SWEPCO have violated the Prevention of Significant Deterioration (PSD) and the New Source Review permitting requirements of the Texas State Implementation Plan, and the Title V permitting requirements at its Welsh Power Plant in Titus County, Texas.

This Notice is issued pursuant to Section 113(a)(1) and (a)(3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 6, and redelegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

A. STATUTORY AND REGULATORY BACKGROUND

1. Under Section 110 of the Act, 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides the attainment and maintenance of National Ambient Air Quality Standards.

2. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable, unless a permit has been issued that comports with the requirements of Part C of Title I of the

Act. Section 161 of the Act, 42 U.S.C. § 7471, provides that each SIP must include a PSD program.

3. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plant that is the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), "[t]he statutory scheme intends to 'grandfather' existing industries; but . . . this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

4. The PSD provisions require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit. To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required. In the case of a modification that is not major, the source must meet the emission limit called for under the applicable minor new source review (NSR) program in the State SIP. The State of Texas has an approved PSD program set forth in 30 T.A.C. Chapter 116, Subchapter B, Division 6.

5. The PSD provisions of Part C of Title I of the Act require preconstruction review and permitting for modification of stationary sources. See 42 U.S.C. §§ 7470 - 7492. Pursuant to applicable regulations, if a major stationary source is planning on making a major modification in an attainment area, then that source must obtain a PSD permit. To obtain the required permit, the source must agree to apply BACT.

6. On June 24, 1992, EPA approved Texas' PSD program. 57 Fed. Reg. 28093, effective July 24, 1992. EPA has approved subsequent revisions to Texas' PSD program. 40 C.F.R. §§ 52.2270(c) and 52.2303. Pursuant to its PSD program, the State of Texas issues permits governing the operation and construction of regulated facilities.

7. Violations of Texas' federally approved PSD program are federally enforceable pursuant to Section 113 of the Act.

8. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V. On June 25, 1996, EPA granted source category-limited interim approval of Texas's Title V program (effective July 25, 1996). On November 30, 2001, EPA granted full approval of Texas'

Title V program. 40 C.F.R. Part 70, Appendix A.¹ Major stationary sources of air pollution and other sources covered by Title V are required to obtain an operating permit that includes emission limitations and such other conditions necessary to assure compliance with all applicable requirements of the Act. 42 U.S.C. §§ 7661a(a) and 7661c(a).

9. Under 40 C.F.R. § 70.1(b), “all sources subject to [Title V must] have a permit to operate that assures compliance by the source with all applicable requirements.” Applicable requirements are defined in 40 C.F.R. § 70.2 to include “(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R. Part 52].”

10. Texas defines “applicable requirements” in 30 T.A.C. § 122.10(2) to include the following:

(F)(i) Chapter 101, Subchapter A of this title (relating to General Rules), §101.1 of this title (relating to Definitions), insofar as the terms defined in this section are used to define the terms used in other applicable requirements;

* * * *

(H) all of the requirements under Chapter 106, Subchapter A of this title (relating to Permits by Rule), or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and any term or condition of any preconstruction permit;

11. Violations of Title V are federally enforceable under Section 113 of the Act.

B. FACTUAL BACKGROUND

12. AEP and AEP Service Corp. are corporations incorporated under the laws of the State of New York.

13. SWEPCO is a corporation incorporated under the laws of the State of Delaware. SWEPCO became a wholly owned subsidiary of AEP on June 15, 2000.

14. AEP, AEP Service Corp., and SWEPCO are each a “person”, as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d). AEP, AEP Service Corp. and SWEPCO are collectively referred to as AEP/SWEPCO in this Notice.

¹ Texas’ Title V program is found in 30 T.A.C. Chapter 122.

15. AEP/SWEPCO own and operate the Welsh Power Plant.

16. The Welsh Power Plant is a coal-fired power plant located near Pittsburg, Titus County, Texas. The Welsh Power Plant consists of three distinct coal-fired boiler units, Units 1, 2 and 3, which generate a total of 1,650 megawatts of electricity. Unit 1 became operational in 1977, Unit 2 became operational in 1980, and Unit 3 became operational in 1982.

17. The Welsh Power Plant is located in Titus County, Texas, an area that has the following attainment classifications at all times relevant to this NOV:

For Ozone (one hour standard): Until June 15, 2005 – Unclassifiable/Attainment;
For Ozone (eight hour standard): After June 15, 2004 – Unclassifiable/Attainment;
For NO₂: Unclassifiable/Attainment;
For SO₂: Attainment;
For CO: Unclassifiable/Attainment;
For PM₁₀: Unclassifiable; and
For PM_{2.5}: Unclassifiable/Attainment.

40 C.F.R. § 81.344.

18. The Welsh Power Plant emits or has the potential to emit at least 100 tons per year of nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), volatile organic compounds (VOCs), and particulate matter (PM).

19. The Welsh Power Plant is a “major emitting facility” as that term is defined in Section 169(1) of the Act, 42 U.S.C. § 7479(1), a “major stationary source” as that term is defined in 40 C.F.R. § 52.21(b)(1) [incorporated by reference into 30 T.A.C. § 116.160(a) of the Texas SIP], and a “major source” as that term is defined by Section 501(2) of the Act, 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2, and 30 T.A.C. § 122.10(13).

20. On September 10, 1998, the Texas Natural Resource Conservation Commission (TNRCC), the predecessor agency to the Texas Commission on Environmental Quality (TCEQ), granted SWEPCO’s application for renewal of Permit Nos. 4381 and PSD-TX-3. TNRCC consolidated these permits and other permits into one permit (1998 PSD Permit) which governs operation of Units 1, 2 and 3 at the Welsh Plant. The 1998 PSD Permit established emission rates for each of the three units.

21. On April 9, 1999, TNRCC issued SWEPCO a Federal Operating Permit, Permit No. O-00026 (1999 Title V Permit) pursuant to 30 T.A.C. Chapter 122.

22. Special Condition 11 of the 1999 Title V Permit required the permittee to comply with all New Source Review authorizations, which included the 1998 PSD Permit, and incorporated by reference the requirements of the 1998 PSD Permit into the 1999 Title V Permit as applicable requirements that are not eligible for any permit shield.

23. The 1999 Title V Permit was renewed by TCEQ on October 11, 2004 as Permit No. O-00026 (2004 Title V Permit).

24. Special Condition 8 of the 2004 Title V Permit requires the permittee to comply with all New Source Review authorizations, which includes the 1998 PSD Permit, and incorporates by reference the requirements of the 1998 PSD Permit into its 2004 Title V Permit as applicable requirements that are not eligible for any permit shield.

C. FINDING OF VIOLATIONS

Violation No. 1 - Failing to Obtain a PSD Permit Prior to Making a Major Modification

25. Paragraphs 1 – 24 are realleged and incorporated by reference.

26. 30 T.A.C. § 116.160 of the Texas SIP incorporates relevant provisions of 40 C.F.R. § 52.21.

27. 40 C.F.R. § 52.21(a)(2)(iii) provides that “[n]o stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source would meet those requirements.”

28. 40 C.F.R. § 52.21(b)(2)(i) defines “major modification” as “any physical change or change in method of operation of a major stationary source that would result in . . . a significant net emissions increase. . . .”

29. The Welsh Power Plant’s original 1973 permit application for Unit 1, in Table 6, identifies coal with 0.5 percent by weight sulfur, on a dry basis, with a heating value of 11,780 Btu/lb (dry) as the primary fuel.

30. The chemical composition of the coal in Table 6 of the Welsh Power Plant’s 1976 permit application for Units 2 and 3 is identical to the chemical composition of coal in the 1973 permit application for Unit 1, with a heating value of 11,780 Btu/lb (dry).

31. The Source Analysis and Technical Review for the Renewal of Permit No. 4381 (dated August 31, 1998) states that “[l]ow sulfur coal (0.5%S, dry basis) is used as fuel”.

32. General Condition 1 of the 1998 PSD Permit states the following:

The facilities covered by this permit shall be constructed and operated as specified in the application for the permit. All representations regarding construction plans and operation procedures contained in the permit application shall be the conditions upon which the permit is issued. Variations from these representations shall be unlawful unless the permit holder first makes application to the Executive

Director of the Texas Natural Resource Conservation Commission (TNRCC or Commission) to amend this permit in that regard and such amendment is approved.[citation omitted].

33. The 1998 PSD Permit requires that the sulfur content of the coal burned at Welsh Units 1, 2, and 3 be measured on a dry weight basis.

34. Special Condition 6 of the 1998 PSD Permit limits, in pertinent part, fuels used in the Units 1, 2 and 3 boilers to “[s]ub-bituminous coal containing no more than 0.5 percent total sulfur by weight.”

35. During various times between August 1998 through December 1998, AEP/SWEPCO burned sub-bituminous coal containing more than 0.5 percent total sulfur by weight (dry basis) in the Units 1, 2, and 3 boilers.

36. The burning of sub-bituminous coal containing more than 0.5 percent total sulfur by weight (dry basis) set forth in Paragraph 35 constitutes a change in method of operation, as that term is used in 40 C.F.R. § 52.21(b)(2)(i).

37. The exemptions set forth in 40 C.F.R. § 52.21(b)(2)(iii) do not apply to the change identified in Paragraph 36.

38. The change identified in Paragraph 36 resulted in “significant net emission increases” of SO₂ from Units 1, 2, and 3. This resulted in a 40% increase in the SO₂ emission rate, which is equivalent to a 0.87 tons of SO₂/hr increase. The change also resulted in additional emissions of approximately 800 tons of SO₂ between August 1998 through December 1998.

39. The change identified in Paragraph 36 constituted a “major modification” as that term is defined by 40 C.F.R. § 52.21(b)(2)(i).

40. AEP/SWEPCO failed to obtain a PSD permit for the major modification pursuant to 40 C.F.R. § 52.21 (incorporated by reference into 30 T.A.C. § 116.160 of the Texas SIP).

41. Therefore, AEP/SWEPCO violated 30 T.A.C. § 116.160 of the Texas SIP by failing to obtain a PSD permit prior to making a major modification at Units 1, 2, and 3.

Violation No. 2 - Burning Sub-Bituminous Coal Containing More Than 0.5 Percent Sulfur by Weight (Dry Basis)

42. Paragraphs 1 – 41 are realleged and incorporated by reference.

43. 30 T.A.C. § 116.115(c) of the Texas SIP provides that “[t]he holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document.”

44. Special Condition 6 of the 1998 PSD Permit states the following:

Fuels used in the Unit 1, 2, and 3 Boiler shall be limited to the following:

A. Sub-bituminous coal containing no more than 0.5 percent total sulfur by weight.

B. No. 2 fuel oil containing no more than 0.5 percent total sulfur by weight.

The use of any other fuel will require a modification of this permit.

45. At various times between June 2001 through May 2004, AEP/SWEPCO burned sub-bituminous coal containing more than 0.5 percent total sulfur by weight (dry basis) in the Units 1, 2, and 3 boilers.

46. Therefore, AEP/SWEPCO violated 30 T.A.C. § 116.115(c) of the Texas SIP and Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7761a(a), 7661c(a), and 40 C.F.R. § 70.6 [30 T.A.C. § 122.142] by failing to limit the sub-bituminous coal burned in Units 1, 2, and 3 to 0.5 percent total sulfur by weight (dry basis).

Violation No. 3 – Varying from Heat Input Limit Representations in Permit Applications

47. Paragraphs 1 – 46 are realleged and incorporated by reference.

48. 30 T.A.C. § 116.116(b) of the Texas SIP provides the following:

(1) Except as provided in subsection (e) of this section, the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:

(A) a change in the method of control of emissions;

(B) a change in the character of the emissions; or

(C) an increase in the emission rate of any air contaminant.

(2) Any person who requests permit amendments must receive prior approval by the executive director or the commission. Applications must be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

49. AEP/SWEPCO represented in its 1973, 1976, and 1997 PSD permit applications that the maximum heat input for Units 1, 2, and 3 would be 5,156 mmBtu/hr.

50. At various hours during August 2006, AEP/SWEPCO exceeded the heat input limit of 5,156 mmBtu/hr at Units 1, 2, and 3.

51. On or about the following dates, AEP/SWEPCO exceeded the heat input limit of 5,156 mmBtu/hr:

Unit 1 – September 11, 2007;
Unit 2 – September 13, 2007; and
Unit 3 – September 12, 2007.

52. The operation of Units 1, 2, and 3 at heat input rates greater than 5,156 mmBTU/hr caused an increase in the emission rate of SO₂.

53. 30 T.A.C. § 116.111 sets forth the requirements for an application for a permit amendment. 30 T.A.C. § 116.111(2)(C) and (I) provides that the application for a permit amendment must contain information that shows the facility will utilize BACT and comply with the PSD requirements of 30 T.A.C. Chapter 116.

54. AEP/SWEPCO failed to submit an application for a permit amendment containing information showing that the facility will utilize BACT and comply with the PSD requirements of 30 T.A.C. Chapter 116 prior to the increase in the emission rate of SO₂.

55. Therefore, AEP/SWEPCO violated 30 T.A.C. §§ 116.111 and 116.116(b) of the Texas SIP by failing to submit an application for a permit amendment containing information showing that the facility will utilize BACT and comply with the PSD requirements of 30 T.A.C. Chapter 116.

Violation No. 4 - Failing to Obtain a Permit Amendment

56. Paragraphs 1 through 55 are realleged and incorporated by reference.

57. 30 T.A.C. § 116.116(c)(1)(B) of the Texas SIP defines permit alteration as the following:

Any change from a representation in an application, general condition, or special condition in a permit that does not cause:

- (i) a change in the method of control of emissions;
- (ii) a change in the character of emissions; or
- (iii) an increase in the emission rate of any air contaminant.

58. On or about March 8, 2007, AEP/SWEPCO submitted a permit alteration request to TCEQ. AEP/SWEPCO requested that TCEQ remove the heat input limits from Special Conditions 2, 3, and 4 of the 1998 PSD Permit. AEP/SWEPCO also requested that Special Condition 6.A of the 1998 PSD permit be changed to state that the sulfur content limit of the coal is to be measured on a "wet (as received) basis".

59. On or about March 20, 2007, the TCEQ issued a permit alteration to AEP/SWEPCO. The permit alteration, among other things, removed the heat input limits from Special Conditions 2, 3, and 4 of the 1998 PSD Permit, and changed Special Condition 6.A. to state that the sulfur content limit of the coal is to be measured on a "wet (as received) basis".

60. The change to Special Condition 6.A. of the 1998 PSD Permit that the sulfur content limit of the coal is to be measured on a "wet (as received) basis" will cause a change in the method of control of emissions of SO₂ from Units 1, 2, and 3.

61. The removal of the heat input limits from Special Conditions 2, 3, and 4 of the 1998 PSD Permit will cause a change in the method of control of emissions of SO₂ from Units 1, 2, and 3.

62. The change to Special Condition 6.A. of the 1998 PSD Permit that the sulfur content limit of the coal is to be measured on a "wet (as received) basis" will cause an increase in the emission rate of SO₂ from Units 1, 2, and 3.

63. The removal of the heat input limits from Special Conditions 2, 3, and 4 of the 1998 PSD Permit will cause an increase in the emission rate of SO₂ from Units 1, 2, and 3.

64. 30 T.A.C. § 116.116(b) of the Texas SIP provides the following:

(1) Except as provided in subsection (e) of this section, the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:

- (A) a change in the method of control of emissions;
- (B) a change in the character of the emissions; or
- (C) an increase in the emission rate of any air contaminant.

(2) Any person who requests permit amendments must receive prior approval by the executive director or the commission. Applications must be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

65. 30 T.A.C. § 116.111 sets forth the requirements for an application for a permit amendment. 30 T.A.C. § 116.111(2)(C) and (I) provide that the application for a permit amendment must contain information that shows the facility will utilize BACT and comply with the PSD requirements of 30 T.A.C. Chapter 116.

66. AEP/SWEPCO failed to submit an application for a permit amendment containing information showing that the facility will utilize BACT and comply with the PSD requirements of 30 T.A.C. Chapter 116.

67. Therefore, AEP/SWEPCO violated 30 T.A.C. §§ 116.111 and 116.116(b) of the Texas SIP by failing to submit an application for a permit amendment containing information showing that the facility will utilize BACT and comply with PSD requirements of 30 T.A.C. Chapter 116.

Violation No. 5 - Failure to Include BACT in Title V Permit

68. Paragraphs 1 through 67 are realleged and incorporated by reference.

69. 40 C.F.R. § 70.6(a) [30 T.A.C. § 122.142] requires that each Title V permit must include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

70. The 2004 Title V permit issued to SWEPCO does not include BACT for SO₂ for Units 1, 2, and 3.

71. Thus, the 2004 Title V permit issued to SWEPCO does not include an emission limitation(s) for SO₂ for Units 1, 2, and 3 that assures compliance with the PSD requirements of the Act and the Texas SIP.

72. Therefore, AEP/SWEPCO violated and continues to violate Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7761a(a), 7661c(a), and 40 C.F.R. § 70.6(a) [30 T.A.C. § 122.142].

D. ENFORCEMENT

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of Title V of the Act, including a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under Title V, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. OPPORTUNITY FOR CONFERENCE

AEP/SWEPCO may, upon request, confer with EPA. The conference will enable AEP/SWEPCO to present evidence bearing on the finding of violations, on the nature of the

violations, and on any efforts it may have taken or proposes to take to achieve compliance. AEP/SWEPCO have a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:


Evan Pearson
Senior Enforcement Counsel (6RC-EA)
Office of Regional Counsel
U. S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

If you have any questions, please feel free to call Evan Pearson at (214) 665-8074.

F. EFFECTIVE DATE

This Notice shall become effective immediately upon issuance.

Dated: 2/5/08



John Blevins
Director
Compliance Assurance and
Enforcement Division